

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOMINICK JOHANN TRICE,

Defendant-Appellant.

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UNPUBLISHED

April 25, 2013

No. 309314

Kent Circuit Court

LC No. 10-009849-FC

Before: FITZGERALD, P.J., and O'CONNELL and SHAPIRO, JJ.

O'CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the majority's affirmance of defendant's convictions of armed robbery and conspiracy to commit armed robbery. I respectfully dissent from the majority's reversal of defendant's conviction of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. I would affirm the conviction on the ground that defendant and his co-conspirators jointly possessed the gun they used to rob the victims in this case.

Defendant argues that he cannot be convicted on the felony-firearm charge because he did not have the gun in his hand at the moment he and his co-conspirators robbed the victims. I disagree. Our Legislature enacted the felony-firearm statute to deter and punish the use of firearms during the commission of felonies. *People v Moore*, 470 Mich 56, 68; 679 NW2d 41 (2004). Our Courts have long recognized that proper application of the statute requires that a felony-firearm conviction be upheld if the defendant had constructive possession of the firearm. *People v Burgenmeyer*, 461 Mich 431, 437; 606 NW2d 645 (2000). In this case, the majority correctly recognizes that a defendant has constructive possession of a firearm if the defendant knows the location of the firearm and has reasonable access to it. *Id.* at 438-439. The majority also correctly recognizes that possession can be exclusive or joint. *People v Johnson*, 293 Mich App 79, 83; 808 NW2d 815 (2011).

Despite the majority's recognition of these established legal rules, the majority concludes that the evidence in this case was insufficient to support defendant's felony-firearm conviction. I disagree. The evidence established that defendant conspired with two other men to use a gun to rob the victims. Although there was no evidence that defendant held the gun, his conduct rendered him constructive possession of the gun. When a victim is held at gunpoint and robbed of his or her possessions, it makes little difference to the victim which of the robbers is in possession of the gun. In my opinion, the felony-firearm statute is designed to deter all

conspirators from using a gun. Otherwise, a group of armed, masked thieves could avoid punishment for use of a firearm against their victim, unless the victim could definitively identify which thief's hand was holding a gun while the others took the victim's possession.

I would affirm defendant's conviction for possession of a firearm during commission of a felony.

/s/ Peter D. O'Connell